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No. 85-1522

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1985

**COAD MILLER**, individually and on behalf of himself and in a representative capacity on behalf of a class of persons similarly situated,

*Petitioner,*

vs.

**CITY OF CHICAGO**, a municipal corporation, and **JOHN DOES**, One through Five, employees, agents and towing contractors,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit**

## RESPONDENTS' BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Whether the respondents' procedures for towing recovered stolen vehicles are constitutional.

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## RESPONDENTS' BRIEF IN OPPOSITION

The Respondents, the City of Chicago, *et al.*, by their attorney, JUDSON H. MINER, Acting Corporation Counsel of the City of Chicago, respectfully request that this Court deny the petition for writ of *certiorari*, seeking review of the Seventh Circuit's opinion in this case. That opinion is reported at 774 F.2d 188.

## STATEMENT OF FACTS

### A. The Respondents' Procedures For Towing Recovered Stolen Vehicles.

Section 27-367 of the Municipal Code of Chicago and Chicago Police Department General Order 75-5 set forth the procedures for towing recovered stolen automobiles. The general order classifies as an "immediate tow" a "vehicle that has been reported stolen and the vehicle's owner is not present at the location of recovery or the vehicle is needed for investigation." The general order requires that police personnel notify vehicle owners of the tow and their entitlement to a hearing on the validity of the tow and any towing or storage charges. Section 27-367 of the Municipal Code states that the owner of a towed automobile may obtain immediate possession of the vehicle by furnishing evidence of title and paying a towing fee of forty-five dollars (sixty-seven dollars for trucks and commercial vehicles) and storage costs of five dollars per day. The payment of the charges may be challenged under section 27-367 by (1) requesting a hearing within twenty-four hours or (2) securing immediate possession of the vehicle by depositing twenty-five dollars and requesting that a hearing be held within seven days.

### B. Petitioner's Challenges To These Procedures.

Petitioner filed this civil rights class action and charged that the provisions of chapter 27 of the Municipal Code of Chicago and the Chicago Police Department General Order 75-5 violate the Fourteenth Amendment. The complaint alleged that the provisions allow the tow and storage of recovered stolen automobiles without the prior consent of the owner (Complaint, C. 1, par. 11).

The district court granted petitioner's motion for summary judgment, holding that the procedures for towing stolen automobiles were unconstitutional because pre-tow notice was not provided to owners of stolen vehicles. The court of appeals reversed the decision and held that the "city is not constitutionally required to give pre-tow notice nor prohibited from assessing towing costs upon individual vehicle owners. . . ." *Miller v. City of Chicago*, 774 F.2d 188, 196 (7th Cir. 1985). The court denied rehearing in the case. The petitioner seeks a writ of *certiorari* and challenges the respondents' assessment of towing and storage fees against the owners of recovered stolen vehicles.

## REASONS FOR NOT GRANTING THE WRIT OF *CERTIORARI*

The petitioner challenges the assessment of towing and storage fees against the owners of recovered stolen vehicles. This challenge was rejected by the court of appeals. *Miller*, 774 F.2d at 196. The court did not, as petitioner contends, "recognize the impropriety" of the fees (Petition, p. 8). The assessment of fees is constitutional, for there is "nothing arbitrary or irrational about these provisions allowing the City to assess the cost of this particularized service directly against the recipient of the service." *Id.*

### 1. The Respondents Had Full Power To Assess Charges For Towing And Storing Recovered Stolen Vehicles.

Municipal legislation "may derive its validity from several grants of power. . . ." *Mister Softee of Illinois v. City of Chicago*, 42 Ill. App. 2d 414, 419 (1st Dist. 1963).

The respondents' power to assess charges for towing and storing recovered stolen automobiles is based on the broad police power of local governments and express statutory grants of power.

The police power is an attribute of sovereignty inherent in municipal government. The police power authorizes a municipality to enact legislation to preserve and protect the health, welfare, and safety of its citizens. *Fireside Chrysler Plymouth-Mazda, Inc. v. Edgar*, 102 Ill. 2d 1 (1984). Pursuant to its police power, a local government, in its discretion, may determine what the public interest requires and what measures are necessary to secure such interests. *Tolmetz v. Board of Education*, 39 Ill. 2d 593 (1968). Under the police power, a municipality may regulate the public streets and, thus, assure the safety and convenience of its citizens. *Oklahoma Telecaster Ass'n v. Crisp.*, 699 F.2d 490 (10th Cir. 1983), *rev'd on other grounds*, 52 U.S.L.W. 4803 (1984); *Consol. Freightways Corp. of Del. v. Kassel*, 730 F.2d 1139, 1147 (8th Cir. 1984). Private interests in automobiles are subject to governmental limitation and the exercise of police powers. *Mays v. Scranton City Police Dept.*, 503 F.Supp. 1255, 1261 (M.D. Pa. 1980). Towing and impoundment of automobiles are procedures to effectuate the police power in the protection of the streets. *Gillam v. Landrieu*, 445 F.Supp. 1030 (E.D. La. 1978). The imposition of fees for the towing and impoundment of automobiles is incident to and a reasonable exercise of the police power. *See generally, Weiss, Inc. v. Whalen*, 135 Misc. 290 (N.Y. 1929); *Means v. American Equitable Assur. Co.*, 186 Ark. 83 (1932); *Park v. Adams*, 289 S.W.2d 829 (Tex. 1956).

The respondents acted to remove stolen vehicles from the public streets and arteries and to prevent congestion or jeopardy to public safety. Accordingly, the "govern-

ment's interest [here] is in providing the best service possible to promote the health, safety and welfare of its citizens." *Gillam, supra*, 445 F.Supp. at 1038. The measures chosen to best achieve these objectives—towing, impoundment, and assessment of charges—were within the respondents' discretion and their broad police power.

Furthermore, specific statutory authority exists for the respondents' towing procedures. The Illinois General Assembly may delegate to municipalities the power to legislate on matters of purely local concern as well as the police power to protect the public health, safety and welfare. *Schuringa v. City of Chicago*, 30 Ill. 2d 504 (1964). The Illinois General Assembly has empowered "the corporate authorities" of local governments to "pass and enforce all necessary police ordinances" and to "regulate the use of the streets". Ill. Rev. Stat. ch. 24, pars. 11-1-1 and 11-80-2 (1985). The corporate authority "may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities. . . ." Ill. Rev. Stat. ch. 24, par. 1-3-2 (1985).

Additionally, the Illinois General Assembly has empowered police officers "to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway" which has been reported stolen. Ill. Rev. Stat. ch. 95½, par. 11-1302 (1985). Municipal police also may tow a stolen vehicle which "comes into the temporary possession or custody of a person in this state." Ill. Rev. Stat. ch. 95½, par. 4-202 (1985). Furthermore, the General Assembly has provided that "[w]hen a vehicle removal from either public or private property is authorized by a law enforcement agency, the owners of the vehicles will be responsible for all towing costs." Ill. Rev. Stat. ch. 95½, par. 4-203(e) (1985).

A "legislative grant of power or authority to an administrative body or officer includes the grant of power to do all that is necessary to execute that power or authority." *Parliament Ins. Co. v. Dept. of Revenue*, 50 Ill. App. 3d 341, 347 (1977). Therefore, the respondents possessed full power to promulgate procedures for recovering stolen automobiles, including the imposition of towing and storage costs. The sovereign police power and the specific grants of statutory power authorized the enactment of these procedures.

**2. The Procedures For Towing Recovered Stolen Vehicles Were Enacted For A Proper Public Purpose And With Reasonable Means Chosen To Accomplish This Purpose. The Procedures Are Constitutional.**

Legislative enactments designed to benefit the public welfare are favored and presumed to be valid. *City of Carbondale v. Brewster*, 78 Ill. 2d 111 (1979). The courts will overturn a police power measure "only if it is unreasonable, clearly arbitrary, and has no foundation in the police power." *Quilici v. Village of Morton Grove*, 695 F.2d 261, 268 (7th Cir. 1982). The burden rests with the party challenging a police measure to prove "that there is no permissible interpretation which justifies its adoption; or that it will promote the safety and general welfare of the people." *First National Bank v. County of Lake*, 7 Ill. 2d 213, 225 (1955). The police measure "need not be in every respect consistent with its aims to be constitutional. It is enough if there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." *Williamson v. Lee Optical Co.*, 348 U.S. 483, 487-88 (1955). The procedures for towing recovered stolen vehicles address serious public concerns in a rational and appropriate manner. Petitioner has not shown the procedures to be violative of the Fourteenth Amendment.

The towing procedures allow the transport of stolen vehicles to a safe place, the preservation of the automobiles, and the prevention of further vandalism. The towing of stolen cars removes them from the public streets and prevents any possible congestion or jeopardy to public safety. The tow takes the car from the control of the thief and thereby prevents the thief from driving it away, using it as an instrument in another crime, or illegally selling the car. These procedures unquestionably protect the public health, safety and welfare. The towing and impoundment of stolen cars and the imposition of costs serve important public interests.

The courts consistently have recognized that when a car is towed, the "government has an interest in imposing the cost of removal upon the vehicle owner. . . ." *Stypmann v. City & County of San Francisco*, 557 F.2d 1338, 1343 (9th Cir. 1977). *Accord, Gillam v. Landrieu*, 455 F. Supp. 1030, 1039 (E.D. La. 1978); *Remm v. Landrieu*, 418 F.Supp. 385, 393 (M.D. Fla. 1978); *Breath v. Cronvich*, 729 F.2d 1006, 1010 (5th Cir. 1984); *Goichman v. Reuban Motors, Inc.*, 682 F.2d 1320, 1324-25 (9th Cir. 1982); *Huemmer v. Mayor and City Council, Etc.*, 474 F.Supp. 704, 709 (D. Md. 1979). The *Gillam* court explained the government's interest in the collection of towing and storage fees: "[t]he government is not engaged in the business of providing car storage, but rather does this as a necessary incident to its policing of the streets." 455 F. Supp. at 1039. Moreover, the power of local governmental entities to impose fees pursuant to the police power is established. *See, e.g.*, Ill. Rev. Stat. ch. 24, 11-141 *et seq.* (1985) (provisions authorizing municipalities to operate sewer systems and to establish rates and charges for the operation of those systems); *Gibbons v. City of Chicago*, 34 Ill. 2d 102 (1966) (upholding the municipal power to impose a license fee); *City of Bloomington v. Wirrick*, 381

Ill. 347 (1942) (upholding that the power to impose parking meter charges is a "power incident to and implied in the power to regulate and limit the time and places in which parking may be permitted"); *Rozner v. Korshak*, 55 Ill. 2d 43 (1973) (upholding fees contained in "Wheel Tax Ordinance" of Chicago).

That cars are stolen with daily frequency increases the governmental interest in the towing and the assessment of charges. The record establishes that in 1980, over 29,000 automobiles were reported stolen and over 22,000 stolen cars were recovered. The "police have limited resources to devote to preventing" further theft or vandalism to the thousands of stolen vehicles recovered annually. *Sutton v. City of Milwaukee*, 672 F.2d 644, 648 (7th Cir. 1982). The public interest in safeguarding the street and in the efficient use of police resources are served well by the towing and impoundment of stolen automobiles and the assessment of charges on the owner.

The towing and impoundment of recovered stolen autos together with the imposition of reasonable costs on the owner are rational means to further legitimate government interests. The storage and towing fees are reasonable and appropriate. The fees are not arbitrary and are not calculated to be a profit-making device for the city. Petitioner has not shown the towing procedures to be unconstitutional.

The petitioner argues, without citation of authority, that the assessment of fees for the recovery of stolen vehicles constitutes a "taking" without due process (Petition, p. 8). The uniform assessment of fees by a governmental body for a rational purpose does not amount to a "taking." *In re South*, 689 F.2d 162 (10th Cir. 1982). "Such an argument could be made against every governmental tax levy." *In re South*, 689 F.2d at 166. Furthermore,

the respondents' procedures provide petitioner with the opportunity to contest the validity of the storage and towing fees. The payment of the charge may be challenged under section 27-367 of the Municipal Code of Chicago by (1) requesting a hearing within twenty-four hours or (2) securing immediate possession of the vehicle by depositing twenty-five dollars and requesting that a hearing be held within seven days. The assessment of towing and storage charges on the owner has been held unconstitutional only where the charges must be prepaid fully before the hearing and the release of the car. *See, e.g., Remm v. Landrieu, supra*; *Stypmann, supra*; *Hale v. Tyree*, 491 F.Supp. 622, 626 (E.D. Tenn. 1979). However, the respondents' procedures provide owners with an opportunity to post bond and obtain release of the vehicle before the hearing.

The petitioner asserts that the fees are unreasonable because the stolen cars are not towed directly to an owner's home (Petition, p. 5). The respondents reasonably have determined that a tow to the nearest city pound is more practical and efficient. A tow to the owner's home, which could be located outside the boundaries of Chicago, cannot be defended as more feasible or more economical. Such a tow would certainly increase the expenses and the time of the tow, and the petitioner still would have the city absorb the full costs.

Petitioner contends that the fees are illegal because "the police do not charge for the transport or storage of other recovered property" (Petition, p. i). This challenge to the towing procedures fails. Stolen automobiles, unlike other stolen goods, pose special problems of recovery. No other stolen good is the size of the automobile. The costs of and equipment involved in the towage and transport of stolen vehicles are self-evident. The costs of the storage of the automobiles also are distinguishable from the costs of the

storage of other recovered goods. The respondents, by state law and municipal ordinance, are required to secure recovered automobiles, inventory and protect the contents of the automobiles, and maintain records on the tows and recoveries. Ill. Rev. Stat. ch. 95, par. 4-202 (1985); Municipal Code of Chicago, sec. 27-423. The stolen vehicles are locked and "legally, safely, and continuously parked" in an automobile pound of the Chicago Police Department. General Order 75-5(a)(2), (d) and (f). A rational basis exists for the imposition of charges for the recovery of stolen automobiles and not for the recovery of other stolen goods. Thus, the charges are constitutional. *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955).

The respondents enacted the procedures for recovering stolen vehicles in the public interest and with rational measures, and the procedures do not offend the Fourteenth Amendment.

## CONCLUSION

For these reasons, the Petition for Writ of *Certiorari* should be denied.

Respectfully submitted,

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